

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA JOSEPH SWANSON,
Minor.

MUSKEGON COUNTY PROSECUTOR,

Petitioner-Appellee,

and

KIMBERLY SWANSON,¹

Petitioner,

v

ROBERT THOMAS SWANSON,

Respondent-Appellant.

UNPUBLISHED

May 13, 2008

No. 281185

Muskegon Circuit Court

Family Division

LC No. 07-036123-NA

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (h), (j), and (n)(i). We affirm.

The Muskegon County Prosecutor's Office and Kimberly Swanson filed a joint petition seeking to terminate respondent's parental rights based on the fact that he was imprisoned for criminal sexual conduct. The victim of the crime was Kimberly Swanson, respondent's ex-wife and Joshua's mother. Respondent was sentenced in May 2002 to a term of 2 to 15 years' imprisonment.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent's incarceration resulted in his loss of income and total

¹ While Kimberly Swanson was co-petitioner with the prosecutor's office, she is not participating in this appeal.

inability to provide the child with care or custody. At the termination hearing, he had been denied parole twice because he was considered a risk to public safety, and he was not eligible for another parole hearing for 24 months. The brutal offense of which respondent was convicted occurred at Kimberly Swanson's home while the couple was separated, and she had an outstanding PPO against respondent. Joshua and Kimberly's other children were present in the home. In fact, Joshua and the other children coming into the basement and turning on the light ended the attack. The couple later divorced, and the judge in the divorce action determined that it was not in Joshua's best interests to visit respondent in prison. The trial court in this case did not err in finding that continuing the parent-child relationship would have been harmful to Joshua. Joshua may have witnessed part of his father's attack on his mother and knew that his father was in prison for hurting her. The court properly referred to the relationship as "dormant" where Joshua had no physical contact with respondent for five years, no telephone calls for five years, and very little contact through letter-writing. Furthering a relationship with respondent would have been harmful to the child.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate respondent's parental rights unless it appeared, on the whole record, that termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court did not clearly err in determining that Joshua's best interests did not preclude termination of respondent's parental rights, even if this position was contrary to that taken by the guardian ad litem below. It is true that respondent presented several witnesses in his favor who testified regarding his ability to parent. Both of his adult daughters acknowledged that their love for their father would not be compromised regardless of what he did to anyone else. However, respondent committed two particularly brutal attacks on Joshua's mother. In the first incident he broke her jaw. Although the child may not have witnessed this actual attack, he certainly saw its aftermath when his mother's jaw was wired shut for three months. Respondent also committed the CSC against the child's mother while Joshua and other children were in the home.

Respondent makes much of the fact that he was allowed to have extensive visitation with the child even after the CSC charges were made and before his sentencing. However, this may only reflect the presumption of innocence that each defendant in a criminal case enjoys. His parental rights were not compromised until he was convicted and sentenced. Shortly thereafter, the trial court in the parties' divorce action ruled that it was not in Joshua's best interests to visit respondent in prison. That was in 2002. Since that time, Joshua has had no physical contact with respondent, and respondent has not talked to Joshua over the telephone. The only contact they have had is through letters. Joshua's mother testified that Joshua was indifferent when it came to respondent, and even respondent's adult daughters admitted that Joshua was not terribly interested in his father. While Joshua and respondent may have enjoyed a close relationship before respondent's incarceration, they have not shared any sort of bond in over five years. This is the result of respondent's own criminality against Joshua's mother. Therefore, termination of respondent's parental rights was not clearly against Joshua's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy